

HOUSE BILL No. 1335

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-17; IC 12-15-5-14; IC 16-18-2; IC 16-21-13; IC 27-8-5-30; IC 27-13-7-23.

Synopsis: Video recordings of surgeries. Requires specified health care facilities to provide the option to patients to video record certain surgical procedures. Sets forth certain requirements. Requires: (1) a state employee health plan; (2) Medicaid; (3) a policy of accident and sickness insurance; and (4) a health maintenance organization; to provide coverage for the video recording of a surgical procedure. Authorizes the state department of health to: (1) inspect a facility's video recording equipment at least once every four months; (2) adopt rules concerning the video recording of surgical procedures by facilities; and (3) assess fines for certain violations.

Effective: July 1, 2016.

Goodin

January 12, 2016, read first time and referred to Committee on Public Health.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1335

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-8-17 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]: **Sec. 17. A state employee health plan (as defined in**
4 **IC 5-10-8-14.8) shall not be issued, entered into, delivered,**
5 **amended, or renewed unless the policy provides coverage for a**
6 **video recording of a surgical procedure requested by the covered**
7 **individual under IC 16-21-13.**

8 SECTION 2. IC 12-15-5-14 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2016]: **Sec. 14. The office shall provide coverage for a video**
11 **recording of a surgical procedure requested by a Medicaid**
12 **recipient under IC 16-21-13.**

13 SECTION 3. IC 16-18-2-122, AS AMENDED BY P.L.61-2015,
14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2016]: Sec. 122. **(a) "Facility", for purposes of IC 16-21-13,**
16 **has the meaning set forth in IC 16-21-13-1.**

17 **(a) (b) "Facility", for purposes of IC 16-35-9, has the meaning set**



1 forth in IC 16-35-9-2. This subsection expires July 1, 2016.

2 ~~(b)~~ (c) "Facility", for purposes of IC 16-41-11, has the meaning set
3 forth in IC 16-41-11-2.

4 SECTION 4. IC 16-18-2-346.1 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2016]: **Sec. 346.1. "Surgical procedure", for**
7 **purposes of IC 16-21-13, has the meaning set forth in**
8 **IC 16-21-13-2.**

9 SECTION 5. IC 16-21-13 IS ADDED TO THE INDIANA CODE
10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2016]:

12 **Chapter 13. Video Recording of Surgical Procedures**

13 **Sec. 1. As used in this chapter, "facility" refers to the following:**

14 **(1) An ambulatory outpatient surgical center licensed under**
15 **this article.**

16 **(2) A hospital:**

17 **(A) licensed under this article;**

18 **(B) subject to IC 16-22; or**

19 **(C) subject to IC 16-23.**

20 **Sec. 2. As used in this chapter, "surgical procedure" means a**
21 **medical procedure involving an incision with instruments in which**
22 **a patient is under general anesthesia.**

23 **Sec. 3. (a) Except as provided in section 9 of this chapter, a**
24 **facility shall provide a patient who is having a surgical procedure**
25 **performed at the facility the option to have a color video recording,**
26 **including a display of the time and date, of the patient's surgical**
27 **procedure.**

28 **(b) If the patient is incapacitated, the facility shall inform the**
29 **patient's health care representative or other individual authorized**
30 **by the patient under IC 16-36-1 of the option to request a video**
31 **recording of the surgical procedure under subsection (a).**

32 **(c) If the patient is a minor, the facility shall notify the minor's**
33 **parent or guardian of the option to request a video recording of the**
34 **surgical procedure under subsection (a).**

35 **(d) If a patient requests to have a video recording made of the**
36 **patient's surgical procedure, the facility may charge the patient the**
37 **reasonable cost, as determined by the state department, for the**
38 **video recording.**

39 **Sec. 4. (a) A patient having a surgical procedure may request**
40 **that the facility where the surgical procedure is being performed**
41 **make a video recording of the surgical procedure.**

42 **(b) A request by a patient for a surgical procedure to be**



recorded must meet the following requirements:

- (1) Be in writing.
 - (2) Be dated and signed by the patient or an individual described in section 3(b) or 3(c) of this chapter.
 - (3) Be witnessed by an individual who is at least eighteen (18) years of age and signed by the witness.
- (c) A patient may revoke a request for a video recording of a surgical procedure by doing any of the following:
- (1) Canceling or destroying the written request for the video recording.
 - (2) Executing a statement in writing and signed by the patient or individual described in section 3(b) or 3(c) of this chapter.
 - (3) Verbally expressing to the facility the patient's wish to revoke the request for a video recording of the surgical procedure.

Sec. 5. A health care provider who is performing a surgical procedure may request the facility where the surgical procedure is to be performed that the facility video record the surgical procedure if the following conditions are met:

- (1) The health care provider has informed the patient, or the patient's guardian or representative if applicable under section 3(b) or 3(c) of this chapter, of the request for video recording of the surgical procedure and the reason for the request.
- (2) The patient, or the patient's guardian or representative if applicable under section 3(b) or 3(c) of this chapter, has consented in writing to the video recording of the surgical procedure.

Sec. 6. A video recording of a surgical procedure under this chapter must record all entry ways into and all exit ways out of the room where the surgical procedure takes place, beginning from the time the room is prepared until the time the patient exits the room.

Sec. 7. (a) Except as provided in subsection (b), a video recording of a patient's surgical recording is considered a part of the patient's health care record and is subject to confidentiality rules concerning medical records. The health care provider shall keep a copy of the video recording as part of the patient's medical record.

(b) A patient may disclose the content of a video recording of the patient's surgical procedure only if:

- (1) the health care provider who performed the surgical procedure consents to the disclosure of the content of the



1 video recording; and

2 (2) the content of the video recording is being disclosed to one
3 (1) of the following:

4 (A) A health care provider treating the patient.

5 (B) Immediate family members of the patient.

6 (C) An attorney for the purpose of obtaining legal advice.

7 (D) Other necessary individuals if a legal action is being
8 taken concerning the surgical procedure. However, the
9 video recording must be filed under seal.

10 (c) A video recording as part of a lawsuit must be treated in the
11 same manner as an individual's medical records are treated for
12 purposes of confidentiality. A video recording may be admissible
13 as evidence:

14 (1) if the recording is certified by an appropriate record
15 custodian; and

16 (2) in any civil or criminal action or proceeding concerning an
17 alleged act or omission depicted in the recording.

18 Sec. 8. A facility shall have available appropriate video
19 recording equipment and technical assistance to comply with a
20 request for the video recording of a surgical procedure as allowed
21 under this chapter.

22 Sec. 9. (a) A facility is not required to provide the option of a
23 video recording under this chapter if the health care provider
24 determines, in the health care provider's professional judgment,
25 that either of the following exist:

26 (1) Immediate surgery is necessary to avert death.

27 (2) Other circumstances exist (including that the video
28 recording would cause a delay) that would create a serious
29 risk of substantial impairment to the patient.

30 (b) The health care provider shall inform the patient of the
31 health care provider's medical judgment used under subsection (a).

32 Sec. 10. After a video recording is made, a facility shall ensure
33 that, after including the video recording as part of the patient's
34 medical record, any copies of the video recording are deleted from
35 the recording device or any electronic device, including any
36 memory card or flash drive.

37 Sec. 11. (a) The state department shall have trained staff inspect
38 a facility's video recording equipment at least one (1) time every
39 four (4) months to ensure that the equipment is in working order.

40 (b) A facility shall allow a state employee to inspect a facility's
41 video recording equipment. The facility shall make any
42 adjustments necessary to the video equipment, as determined by



the inspector.

Sec. 12. (a) The state department shall adopt the following rules under IC 4-22-2:

(1) Rules to establish standards for the video recording of surgical procedures to ensure the recordings are professional and of sufficient quality to accurately portray the surgical procedure.

(2) Rules to set reasonable fees that a facility may charge a patient for a video recording under this chapter.

(3) Any other rule necessary to implement this chapter.

(b) The department shall adopt rules under IC 4-22-2 concerning the following:

(1) Criteria and procedures for providing notice of the option to video record a surgical procedure.

(2) Protocol concerning the preservation and destruction of video recordings.

(3) Standards, procedures, and forms for an advance request for a video recording of a surgical procedure.

(4) Establishment of fines for violations of this chapter, subject to section 13 of this chapter.

(c) The state department shall prepare and distribute a form to health care providers and facilities to be used by a patient or a health care provider for requesting a video recording of a surgical procedure under this chapter.

Sec. 13. (a) A health care provider who knowingly refuses to comply with a request under this chapter to video record a surgical procedure is subject to:

(1) disciplinary action under IC 25-1-9; and

(2) a fine assessed by the state department, in an amount determined under section 12 of this chapter but not to exceed twenty-five thousand dollars (\$25,000).

(b) A facility that knowingly refuses to comply with a request that meets the requirements of this chapter by a patient to video record a surgical procedure is subject to a fine assessed by the state department, in an amount determined under section 12(b)(4) of this chapter.

(c) The state department may assess a fine against a person who knowingly conceals, cancels, defaces, damages, or destroys:

(1) a request for a video recording of a surgical procedure under this chapter:

(A) without the consent of the patient or individual described in section 3(b) or 3(c) of this chapter; or



1 **(B) other than in the ordinary course of business**
 2 **concerning the destruction of documents; or**
 3 **(2) a video recording, other than in the manner described in**
 4 **this chapter.**

5 **(d) The state department may assess a fine against a patient or**
 6 **individual described in section 3(b) or 3(c) of this chapter who**
 7 **discloses a video recording of a surgical procedure in violation of**
 8 **this chapter.**

9 SECTION 6. IC 27-8-5-30 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2016]: **Sec. 30. A policy of accident and sickness insurance may**
 12 **not be issued, delivered, amended, or renewed unless the policy**
 13 **provides coverage for a video recording of a surgical procedure**
 14 **requested by the covered individual under IC 16-21-13.**

15 SECTION 7. IC 27-13-7-23 IS ADDED TO THE INDIANA CODE
 16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2016]: **Sec. 23. An individual contract or group contract may not**
 18 **be entered into, delivered, amended, or renewed unless the policy**
 19 **provides coverage for a video recording of a surgical procedure**
 20 **requested by the enrollee under IC 16-21-13.**

